

401 KAR 45:080. Financial requirements and bonds for special waste facilities.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.46, 224.50, 224.99, Chapter 355

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224 requires the cabinet to adopt administrative regulations for the managing, processing, or disposal of wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain or permit the use of a waste site or facility to obtain a permit. This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities. This administrative regulation sets forth the financial requirements for closure and postclosure of special waste sites or facilities.

Section 1. Applicability. The financial assurance criteria and bond requirements apply to the owner or operator of special waste landfills, Type A landfarming and composting sites or facilities, and research, development and demonstration sites or facilities, and other sites or facilities if required by the cabinet.

Section 2. Closure Cost Estimate. The owner or operator shall have a detailed, current written estimate, in dollars, of the cost of hiring a third party to close the special waste disposal site or facility in accordance with the closure plan developed to satisfy the closure requirements in Section 4 of 401 KAR 45:100 and Section 5 of 401 KAR 45:110.

(1) The estimate shall equal the cost of closing the special waste disposal site or facility at the point in the active life when the extent and manner of its operation would make closure the most expensive. The cabinet may adjust the figure for inflation and other factors. The owner or operator shall base the cost estimate on the following elements:

- (a) Design;
- (b) Site grading and drainage;
- (c) Hauling and placing of each element of the approved cap;
- (d) Final grading and drainage of the cap;
- (e) Revegetation of the cap; and
- (f) Quality control and construction certification.

(2) The owner or operator shall increase the closure cost estimate and the amount of financial assurance provided under Section 5 of this administrative regulation if changes to the closure plan or special waste disposal site or facility conditions increase the maximum cost of closure at any time during the active life.

(3) The owner or operator may request a reduction in the closure cost estimate and the amount of financial assurance provided under Section 5 of this administrative regulation if he can demonstrate that the cost estimate exceeds the maximum cost of closure at any time over the life of the special waste disposal site or facility.

(4) The owner or operator shall keep a copy of the latest closure cost estimate at the special waste disposal site or facility until the owner or operator has been notified by the cabinet that he has been released from closure financial assurance requirements under Section 5 of this administrative regulation.

Section 3. Postclosure Cost Estimate. (1) The owner or operator shall have a current, detailed written estimate, in dollars, of the cost of hiring a third party to conduct each phase of postclosure monitoring and maintenance of the special waste site or facility in accordance with the postclosure plan developed to satisfy the postclosure requirements of Section 4 of 401 KAR 45:100 and Section 5 of 401 KAR 45:110. The postclosure cost estimate for each phase of postclosure used to demonstrate financial assurance in Section 6 of this administrative regulation shall be calculated by multi-

plying the annual cost estimate for each phase of postclosure by the number of years of postclosure care required.

(2) The cost estimate for each phase of postclosure shall be based on the most expensive costs of postclosure during that phase.

(3) The owner or operator shall increase the amount of the postclosure cost estimate and the amount of financial assurance provided under Section 6 of this administrative regulation if changes in the postclosure plan or facility conditions increase the maximum costs of postclosure.

(4) The owner or operator may request a reduction in the postclosure cost estimate and the amount of financial assurance provided under Section 6 of this administrative regulation if he can demonstrate to the satisfaction of the cabinet that the cost estimate exceeds the maximum costs of postclosure remaining over the postclosure period.

(5) The owner or operator shall keep a copy of the latest postclosure cost estimate at the site or facility until he has been notified by the cabinet that he has been released from postclosure financial assurance requirements for the entire facility under Section 6 of this administrative regulation.

Section 4. Financial Mechanisms. The owner or operator shall use one (1) of the financial mechanisms specified in Section 7 or 10 of this administrative regulation, which satisfies the following criteria:

(1) The financial assurance mechanism shall ensure that the amount of funds is sufficient to cover the costs of closure and postclosure care;

(2) The financial assurance mechanisms shall ensure that funds shall be available in a timely fashion; and

(3) The financial assurance mechanisms shall guarantee the availability of the required amount of coverage prior to the initial receipt of special waste.

Section 5. Closure Financial Assurance. The owner or operator of a special waste site or facility subject to this administrative regulation shall establish, in accordance with Section 4 of this administrative regulation, financial assurance for closure of the facility, in an amount equal to the most recent closure cost estimate prepared in accordance with Section 2 of this administrative regulation. The owner or operator shall provide continuous coverage for closure until released from financial assurance requirements pursuant to Section 4 of 401 KAR 45:100 or Section 5 of 401 KAR 45:110.

Section 6. Postclosure Financial Assurance. The owner or operator of a special waste site or facility subject to the administrative regulation shall establish, in accordance with Section 4 of this administrative regulation, financial assurance for postclosure care of the facility, in an amount equal to the most recent postclosure cost estimate prepared in accordance with Section 3 of this administrative regulation. The owner or operator shall provide continuous coverage for postclosure until released from the financial assurance requirement pursuant to Section 4 of 401 KAR 45:100 or Section 5 of 401 KAR 45:110.

Section 7. Performance Bond. (1) Before the cabinet shall issue a construction/operation permit, the owner or operator of a special waste site or facility that is required to post financial assurance pursuant to this administrative regulation shall complete a performance bond on Form DEP 7094E entitled "Performance Bond" (November 2016). The requirements contained in the performance bond are incorporated in this administrative regulation by reference. The performance bond may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday;

(2) To satisfy the financial requirement, the owner or operator shall submit a performance bond

and one (1) of the following:

(a) A surety bond which is executed by filling in the required information on the performance bond submitted in accordance with subsection (1) of this section and by submitting a copy of the surety bond agreement to the cabinet;

(b) A letter of credit as set forth on Form DEP 7094F entitled "Irrevocable Letter of Credit" (November 2016). The requirements contained in the irrevocable letter of credit are incorporated in this administrative regulation by reference. The irrevocable letter of credit may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky, 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday;

(c) An escrow agreement as set forth on Form DEP 7094G entitled "Escrow Agreement" (November 2016). The requirements contained in the escrow agreement are incorporated in this administrative regulation by reference. The escrow agreement may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564- 6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday;

(3) Other financial assurance as specified in Section 10 of this administrative regulation.

Section 8. Release of Financial Assurance. (1) Financial assurance posted to assure proper closure of a special waste landfarming or composting facility shall be released in accordance with Section 4 of 401 KAR 45:100.

(2) Financial assurance posted to assure proper closure of a special waste landfill shall be released in accordance with Section 5 of 401 KAR 45:110.

Section 9. Financial Assurance for Publicly Owned Facilities. The owner or operator of a publicly owned facility shall provide a budget for the permitting, construction, operation, closure, and post-closure care of the facility. The budget shall be revised and submitted annually. When elements of the facility's permitting, construction, operation, closure, or postclosure care are to be accomplished by contract or agreement, a copy of the contract or agreement shall be submitted to the cabinet.

Section 10. Financial Assurance for Captive Facilities. The cabinet may accept other satisfactory financial assurance as adequate financial responsibility for a special waste site or facility which is exclusively owned and operated by a special waste generator on property owned by the special waste generator for the purpose of accepting special waste exclusively from the special waste generator. (18 Ky.R. 3092; Am. 3439; eff. 6-24-92; TAm eff. 7-8-2016; TAm eff. 12-21-2016.)